

In the Matter of License No. 200543, Merchant Mariner's Document  
No. Z-353136-D1 and All Other Seaman Documents

Issued to: Richard H. Clinton

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1381

Richard H. Clinton

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 February 1962, an Examiner of the United States Coast Guard at Long Beach, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that, on 14 August 1959, Appellant made a false statement of material fact, under oath, in his application for renewal of License No. 176 486, namely that he had not made application to the Officer in Charge, Marine Inspection in any other port and been rejected when, in fact, he had applied for renewal on 13 June 1955 and had been rejected.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification. Both parties introduced in evidence numerous documentary exhibits.

The hearing was held in May 1960. In decision, the Examiner states that much of the delay in preparing the decision was due to the inability of the Investigating Officer to locate certain documents until July 1961, but the Examiner does not consider the information contained in such documents to be essential to the proof of the specification.

The decision was served on 16 March 1962. Appeal was timely filed on 26 March but Appellant did not surrender Licenses No. 200543 until 18 July 1962.

FINDINGS OF FACT

On 26 May 1950 at Seattle, Washington, Appellant was issued Third Mate's License No. 95412 to remain in effect for 5 years. On 16 July 1954, Appellant was issued License No. 176486 at San Pedro, California to replace License No. 95412, which was mutilated, for the balance of the 5 years. On 16 September 1954, Appellant was

found to be physically and mentally fit for the sea duty by a United States Public Health Service physician at San Pedro, California. On 4 March 1955, the same physician certified that Appellant was not fit for sea duty, due to a "paranoid condition", in connection with his application for a duplicate merchant mariner's document.

On 13 or 15 June 1955, Appellant applied to the Officer in Charge, Marine Inspection, at Long Beach for renewal of his Third Mate's License No. 176486 which had expired on 25 May 1955. The license was retained by the Coast Guard with the following notation on it: "Approved for Renewal 6/13 (or 15)/55 subject to physical examination." By letter dated 15 June 1955, the same Public Health Service physician at San Pedro notified the O.C.M.I. at Long Beach that Appellant was still unfit for sea duty due to the "paranoid condition" mentioned in the medical report of 4 March 1955. Appellant was not issued another license at this time.

On 24 October 1955, a Public Health Service physician at Seattle, Washington certified that Appellant had a paranoid personality but was not disturbed to the degree that he could not go to sea. Hence, it was found by the physician, after considering Appellant's prior medical history, that he was fit for sea duty. The O.C.M.I. at Seattle referred this report to the Commandant in connection with the duplicate merchant mariner's document applied for by Appellant.

The record contains conflicting medical opinions concerning Appellant's mental condition between 24 October 1955 and 16 March 1959. On the latter date, the same physician at San Pedro found that Appellant was not fit for sea duty. The reason given this time was not a "paranoid condition" as before, but "possible paranoid traits". The record does not contain evidence that Appellant filed a written application for renewal of his license in connection with this medical report. The regulations required such an application to be in writing after 17 September 1955.

On 14 August 1959 at Honolulu, Hawaii, Appellant filed a written application for renewal of his license with the Officer in Charge, Marine Inspection. Appellant's only signature on the application appears in the block marked "Signature of Appellant". This is directly beneath the following statement on the form: "I have not made application to the Officer in Charge, Marine Inspection, in any other port and been rejected". Appellant also submitted to the O.C.M.I. a photostatic copy of his License No. 176468 with the notation on it: "Approved for Renewal 6/13 (or 15)/55 subject to physical examination". Appellant passed a written professional examination as well as the routine Public Health Service physical examination for license renewal and was

issued Third Mate's License No. 200543 on 21 August 1959 by the Officer in Charge, Marine Inspection, at Honolulu.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the alleged charges are provided for in another section of the Code of Federal Regulations and the laws of the United States; the Examiner did not have jurisdiction of the subject matter because License No. 200543 was not in effect at the time of the alleged offense on 14 August 1959; and Appellant did not commit the misconduct alleged.

#### OPINION

Appellant has not specified the other laws and regulations which he states provide for the alleged charges. Regardless of what he is referring to, there is no doubt that this is a matter which is properly treated by the Coast Guard within the meaning of 46 U. S. Code 239(g) since it involves matters concerning licenses and documents issued by the Coast Guard to merchant seamen.

As pointed out by the Examiner, jurisdiction is established by the fact that the alleged offense pertains to acts performed by Appellant solely by virtue of the fact that he had a license at one time and was attempting to obtain another one of the same type. Thus, it is considered that he was acting under the authority of, or exercising rights with respect to, both the expired license which he had the right to renew within certain limitations and the new license which he had a right to obtain of he applied for it as a renewal and met the conditions provided for the issuance of such licenses.

I agree with the Examiner's conclusion that Appellant made a false statement under oath in his application on 14 August 1959 to the Officer in Charge, Marine Inspection, at Honolulu. It is also apparent that said official relied on such statement in issuing the renewal, even though there was filed at the same time a photostatic copy of Licenses No. 176486 with the notation thereon that Appellant had previously applied in another port for a renewal in 1955 and had been rejected. Whether the failure to observe this notation was due to inadvertence or oversight, it must be presumed that the Officer in Charge, Marine Inspection, was not cognizant of it because, with such knowledge and following customary practice, such issuing officer would have checked with the office which rejected the previous application before taking action on the application before him.

It is noted that the Examiner, in his opinion, was influenced

by some evidence tending to show that the Appellant was incompetent, namely, the reason behind the Appellant's rejection in 1955. The specification under the charge did not raise this issue. The offense was not the failure to disclose the reason for the rejection, but that there was a false statement of material fact denying the prior application and rejection. This case cannot come with the application of the rule expressed in Kuhn v. Civil Aeronautics Board (C.A.D.C., 1950), 183 F. 2d 839, that the proof in administrative proceedings need not adhere strictly to the wording of the specifications so long as there has been actual notice and litigation of the issue and there is no surprise. The findings of the Examiner stating that the conflicting medical opinions as to the Appellant's fitness for sea duty were submitted to Public Health Service Headquarters in Washington, D.C. and that this resulted in a revised opinion by the Public Health Service at Seattle that Appellant was unfit for sea duty are based solely on a letter from an Office of Coast Guard Headquarters stating these matters as facts. This is not the type of hearsay evidence which constitutes substantial evidence under some circumstances. The strong implication in the Examiner's decision that he accepts, as conclusive, this evidence that the highest medical authorities of the Public Health Service consider Appellant to be unfit for sea duty is unsatisfactory for another reason. When the issue of competence or fitness for sea duty is properly before an examiner at a hearing, it is his function to make the final determination giving due weight to the symptoms and diagnoses of the medical authorities. See Commandant's Appeal Decision No. 1160.

#### CONCLUSION

The specification is found in that Appellant made a false statement under oath in his application of 14 August 1959 to the effect that he had not previously applied for a renewal of his license in any other port and been rejected when, in fact, he had so applied in 1955 and been rejected. Therefore, I conclude that, having obtained the license upon such representation, such license is invalid and the Appellant is not entitled to it. However, in view of all the circumstances, I think the Appellant should be placed in the same position with respect to the license as though the licenses had not been issued. The Appellant may obtain a new license and a Merchant Mariner's document at such time as he is found fit for sea duty at any Public Health Service facility after a current examination and consideration of his prior medical history.

#### ORDER

The order of the Examiner dated at Long Beach, California, on 16 February 1962, is MODIFIED above, is AFFIRMED.

D. McG. Morrison  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 20th day of March 1963.